UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON DC 20460

Office of Prevention, Pesticides
and Toxic Substances

May 25, 2001

MEMORANDUM

SUBJECT: RFA/SBREFA Certification for Import Tolerance Revocation

FROM: Denise Keehner, Division Director, Biological and Economic Analysis Division (7503C), Office of Pesticide Programs, OPPTS, U.S. Environmental Protection Agency

TO: Public Docket concerning Tolerance Revocation Rulemaking, Proposed or Final

Issue: Because tolerance revocation is rule-making, the Agency needs to certify -- under RFA/SBREFA -- that the tolerance revocation does not impose a significant adverse impact on a substantial number of small entities or conduct an initial and final regulatory flexibility analysis and convene a review panel. Currently, OPP is trying to update the FR notice from 1997 that made a broad, general certification. The same conditions apply now as they did in 1997, but the supporting documentation is being updated, so it is necessary to reconstruct the basis for Agency expectations that import tolerance revocations will not generate significant impacts on substantial numbers of small entities. The primary RFA/SBREFA focus is on U.S. based import businesses who trade in products that may contain one or more residues being banned under the tolerance revocation.

Preliminary Analysis:
The arguments for why we would not expect to see significant impacts on a substantial number of small entities can be put into three different categories:

1. Cases where substantial numbers of small entities are not affected because:
    a. Import companies are not small businesses.
    b. If import companies are small businesses, then too few are affected to be ineligible for SBREFA certification.

2. Cases where impact on import commodity price is not significant (minimal supply effects) because:
    a. Affected commodity is widely traded on international markets/exchanges, and only a small proportion of overall production is treated.
    b. A small proportion of a crop is treated within a country, suggested the supply within that country will be relatively unaffected.
    c. There are sufficient alternatives for the chemical with the cancelled tolerance, and these alternatives have few, if any, impacts on output or production costs for the raw agricultural commodity.
3. Cases where there are limited alternatives for the pesticide in a given country, leading

to an increase in the supply price, but:

a. The supply price is only a proportion of the import price, where the majority of the price reflects transportation and other distribution costs.

b. The supply price increases for a particular commodity from a particular country, but it does not impose a significant impact on importer sales because the import company has diversified sales.

c. The supply price increases for a particular commodity from a particular country, but there are other sources of the commodity, and the transaction costs of utilizing other suppliers is sufficiently low that it doesn't significantly affect the overall sales of the importing company.

Therefore, if ANY of these eight conditions hold, then we can certify that there is no SBREFA issue. Conversely, in order for there to be consideration of a SBREFA concern that would require more detailed analysis, ALL of the following have to hold:

1. There are importers for a particular commodity affected by the tolerance revocation, who qualify as small business under SBA guidelines; AND
2. there is a substantial number of small importers whose sales are affected by the tolerance revocation; AND
3. the affected commodity is NOT widely traded on international markets; AND
4. a sizable proportion of the production in the limited geographic production region is treated with the particular pesticide (suggesting potential supply effects); AND
5. there a limited and/or expensive alternatives for the particular pesticide in the limited geographic production region, with a concomitant potential for sizable yield loss or increase in cost of production; AND
6. the price of the raw agricultural commodity is a large component of the sales price of the import; AND
7. the importing companies are not diversified, and the increase in raw commodity cost will lead to a significant decline in sales revenue.

There is a negligible joint probability of all these conditions holding simultaneously, so I believe it appropriate for the Agency to take the position that import tolerance revocations can be certified under RFA/SBREFA. I base this conclusion on several observations: most commodities subject to import tolerance revocation are widely traded on international markets (according to USDA's data on agricultural imports and exports) and BEAD's data on foreign pesticide use suggest it is rare for a single pesticide to be extensively used in each production/export region, such that there is a minimal chance of import tolerance revocation leading to price/cost increases for importers with an attendant SBREFA concern. Even in the very unlikely event that an import tolerance revocation leads to significant price/cost increases for a particular commodity, many importers of agricultural commodities are diversified companies dealing in many commodities, so that a price/cost increase for one commodity will not significantly affect total company revenues.

At the same time, it will be useful to continue building a set of data describing why one or more of these seven conditions is not likely to hold. The plan for the medium to long term is to collect such supporting data, sometimes using general industry profiles and sometimes using analyses of specific commodity/chemical combinations.